

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Burlington Northern and Santa Fe Railway Company, Clarion :
Township Road District, and the State of Illinois, Department of :
Transportation. :
: T03-0075
Stipulated Agreement regarding improving public safety at the :
TR-87 (2500N) highway-rail grade crossing of the Company's :
tracks located near Mendota, Bureau County, Illinois, designated :
as crossing AAR/DOT 079 651J, milepost 87.26-A. :

ORDER

By the Commission:

On July 9, 2003, July 15, 2003, August 4, 2003, and August 8, 2003, the Staff of the Illinois Commerce Commission, Clarion Township Road District, The Burlington Northern and Santa Fe Railway Company and the Illinois Department of Transportation, respectively, executed the Stipulated Agreement No. 1055 according to the provisions of Section 18c-7401 of the Illinois Commercial Transportation Law. The Stipulated Agreement, which is appended hereto, provides for safety improvements at the TR-87 (2500N) highway-rail grade crossing of The Burlington Northern and Santa Fe Railway Company's tracks located near Mendota, Bureau County, Illinois, designated as crossing DOT 079 651J, milepost 87.26-A. The Stipulated Agreement contains an estimate of cost to accomplish the improvement and a division of cost among the parties.

The Commission, having given due consideration to the Stipulated Agreement, finds that:

- (1) The Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) The physical characteristics of the subject highway - railroad grade crossing, rail and highway volumes and speeds are indicated on Exhibit A of the Stipulated Agreement appended hereto;
- (3) The parties agree that in the interest of public safety the improvement set forth in Section 2 of the Stipulated Agreement, appended hereto should be performed;
- (4) The cost for the proposed improvement should be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;
- (5) It is fair and reasonable that the Secretary of the Illinois Department of Transportation through the Grade Crossing Protection Fund of the Motor

Fuel Tax Law and The Burlington Northern and Santa Fe Railway Company be directed to bear their respective portions of the actual cost of the proposed improvement as set forth in Section 5 of the Stipulated Agreement, appended hereto;

- (6) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED that the terms of the Stipulated Agreement executed by the Staff of the Commission, Clarion Township Road District, The Burlington Northern and Santa Fe Railway Company and the Illinois Department of Transportation on July 9, 2003, July 15, 2003, August 4, 2003, and August 8, 2003, respectively, be, and they are hereby accepted and required to be met by the aforesaid parties.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company be, and it is hereby, required and directed to proceed immediately in performing its work as set forth in Section 2 of the Stipulated Agreement, appended hereto and shall complete its work within one (1) year from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvement herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Section 5 of the Stipulated Agreement, appended hereto.

IT IS FURTHER ORDERED that all bills for expenditures authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit of the Illinois Department of Transportation's Bureau of Local Roads and Streets, Illinois Department of Transportation, Central Bureau of Local Roads and Streets, 2300 South Dirksen Parkway, Springfield, Illinois 62674. The Department shall submit a copy of all bills to the Director of Processing and Information, Transportation Bureau of the COMMISSION. The final bill for expenditures from each party shall be clearly marked "Final Bill". In addition, authorization for reimbursement from the Grade Crossing Protection Fund for this project shall expire, and the Department shall de-obligate all remaining Grade Crossing Protection Fund dollars, twelve (12) months after the

completion date specified in this or any Supplemental Order for this project issued by the Commission.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of the aforesaid detailed cost estimate and general layout plan, furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when considering the application herein required to be filed in accordance with Form 3 of 92 Ill. Adm. Code 1535.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall file Form 3 of 92 Ill. Adm. Code 1535 of this Commission showing details of the automatic warning devices herein required and shall receive approval thereof by X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall, within ninety (90) days from the date of this Order, submit to the Director of Processing and Information, of the Commission's Transportation Bureau, the name, title, mailing address, phone number, facsimile number, and electronic mailing address of the Company employee responsible for management of this project.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall file a written report with the Director of Processing and Information, of the Commission's Transportation Bureau, within fifteen (15) days of the conclusion of each calendar quarter, stating the status of the billing for Grade Crossing Protection Fund reimbursement for their portion of the project and the percentage of completion of their portion of the project; if any portion of the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall submit to the Director of Processing and Information, Transportation Bureau of the Commission within five (5) days of the completion of the work herein required, a United States Department of Transportation Inventory Form (#6180.71) as a notice of said completion.

IT IS FURTHER ORDERED THAT any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED THAT any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of

Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED THAT requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED THAT the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 4th day of September, 2003.

Edward C. Hurley
Chairman ²

JUDGE
SECTION CHIEF <i>MES</i>
<i>[Signature]</i> ORDERS SUPERVISOR